

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

**May 13, 2014 at 10:00 a.m.**

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**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

**1. Matters resolved without oral argument:**

Unless otherwise stated the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled "Amended Civil Minute Order."

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

- 2. The court will not continue any short cause evidentiary hearings scheduled below.**
- 3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.**
- 4. If no disposition is set forth below, the matter will be heard as scheduled.**

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1. [11-49104](#)-D-13 PONN SANN  
LMT-7

MOTION TO ORDER THE CHAPTER 13  
TRUSTEE TO PAY LATE-FILED CLAIM  
4-2-14 [[86](#)]

2. [14-21904](#)-D-13      HERIBERTO/YOLANDA LEMUS      MOTION TO VALUE COLLATERAL OF  
DN-1      CHASE  
4-15-14 [[18](#)]

**Final ruling:**

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Chase at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Chase's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

3. [11-21406](#)-D-13      EDGAR/ROSALINDA BURGOS      OBJECTION TO CLAIM OF JP MORGAN  
MLA-10      CHASE BANK, N.A., CLAIM NUMBER  
5  
4-7-14 [[114](#)]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the objection to claim is supported by the record. As such the court will sustain the debtors' objection to claim. Moving party is to submit an appropriate order. No appearance is necessary.

4. [14-22208](#)-D-13      JEFFREY/SARA CHAPMAN      MOTION TO VALUE COLLATERAL OF  
JAD-1      NATIONSTAR MORTGAGE  
3-19-14 [[13](#)]

**Final ruling:**

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Nationstar Mortgage at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Nationstar Mortgage's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

5. [11-42511](#)-D-13 MARVIN/MELINDA QUEZADA MOTION TO VALUE COLLATERAL OF  
JDP-1 ONE WEST BANK, N.A.  
4-2-14 [[62](#)]

**Final ruling:**

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of One West Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of One West Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

6. [11-46712](#)-D-13 ALBERT/LAVETTE RICHARDS MOTION TO APPROVE LOAN  
HWW-5 MODIFICATION  
4-8-14 [[93](#)]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to approve loan modification is supported by the record. As such the court will grant the motion to approve loan modification by minute order. No appearance is necessary.

7. [11-46712](#)-D-13 ALBERT/LAVETTE RICHARDS MOTION TO MODIFY PLAN  
HWW-6 4-8-14 [[97](#)]

**Final ruling:**

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

8. [11-26015](#)-D-13 ROGER/TISHA GALLARDO MOTION TO MODIFY PLAN  
TBK-4 4-3-14 [[99](#)]

9. [13-36215](#)-D-13 CINDY/DONAL LEE MOTION TO AVOID LIEN OF TARGET  
CLH-3 NATIONAL BANK  
4-10-14 [[58](#)]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

10. [13-22816](#)-D-13 RICHARD/REBECCA PELOSO MOTION TO MODIFY PLAN  
JAD-3 4-4-14 [[34](#)]

**Final ruling:**

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

11. [13-28318](#)-D-13 WILLIS/VICKIE MARZOLF MOTION TO CONFIRM PLAN  
PK-4 3-26-14 [[204](#)]

**Final ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the notice of hearing gives an incorrect courtroom number and department, and fails to provide the location of the courthouse where the hearing will be held, as required by LBR 9014-1(d)(2); (2) the moving parties failed to serve Gary Farrar and the Suntag Law Firm, holders of approved administrative claims in this case; and (3) the proof of service is not

signed under oath, as required by 28 U.S.C. § 1746. As a result of these service and notice defects, the motion will be denied, and the court need not reach the issues raised by the trustee and Financial Center Credit Union at this time. The motion will be denied by minute order. No appearance is necessary.

12. [09-37023](#)-D-13 CHRISTOPHER VREELAND MOTION TO VALUE COLLATERAL OF  
JDP-1 CITIBANK, N.A.  
4-7-14 [[49](#)]

**Final ruling:**

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Citibank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Citibank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

13. [13-31324](#)-D-13 WILLIAM/ARMELITA BLAKE MOTION TO CONFIRM PLAN  
DMR-2 4-3-14 [[40](#)]

14. [09-39726](#)-D-13 JOSE RODRIGUEZ AND CONTINUED MOTION TO APPROVE  
CJY-3 ANJENNETTE LOAN MODIFICATION  
3-27-14 [[58](#)]

15. [10-34926](#)-D-13 JIMMIE/NANETTE WATTS  
DN-2

OBJECTION TO CLAIM OF AMERICAN  
GENERAL FINANCE, CLAIM NUMBER  
25  
3-19-14 [[59](#)]

**Final ruling:**

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the objection to allowing the claim of American General Finance as secured, claim number 25 is supported by the record. As such the court will sustain the objection to the secured status of American General Finance's claim, but will allow the claim as unsecured. Moving party is to submit an appropriate order. No appearance is necessary.

16. [11-26031](#)-D-13 TIMOTHY/CANDACE RHODES  
CJY-2

MOTION TO MODIFY PLAN  
4-7-14 [[36](#)]

**Final ruling:**

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

17. [14-20533](#)-D-13 JACOB WINDING  
SRM-1

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
4-11-14 [[46](#)]

**Tentative ruling:**

This is the debtor's objection to a portion of the claim of Wells Fargo Bank (the "Bank"), Claim No. 7 on the court's claims register. The Bank has filed a response. For the following reasons, the objection will be overruled. 1

The arrearage portion of the Bank's claim includes an escrow shortage in the amount of \$5,204.41. The debtor objects to this portion of the claim. She testifies that prior to the filing of her petition, her mortgage payment was \$1,405.88 per month, which included an escrow payment of \$118 per month, and that she was seven months behind on her mortgage payments at the time of filing. She concludes that "[b]ased thereon, the escrow shortage could not exceed \$826 [\$118 x 7]." A. Warren Decl., filed March 27, 2014, at 2:7.

The Bank responds, first, that the debtor has not met her burden of producing evidence sufficient to overcome the prima facie validity of the Bank's claim. The Bank is wrong. The Bank's characterization of the debtor's declaration as self-serving does not mean it is not admissible evidence. It is some evidence that the amount of the Bank's claimed escrow shortage is wrong. Given that the Bank provided no analysis of its figure in its proof of claim, and given that the debtor's testimony provides at least a formula under which she believes the escrow shortage is appropriately calculated, the debtor has met her burden to show "facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." See Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. 2000) (citation omitted). Thus, "the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." Id. (citations omitted).

The Bank has submitted a declaration of a bankruptcy specialist and custodian of records for the Bank, who testifies that an escrow account was set up for the debtor in June of 2010 (ten months before this case was filed); that between June 1, 2010 and March 11, 2011, the Bank disbursed a total of \$6,120.22 toward property taxes and penalties on the debtor's behalf; and that an escrow account analysis was prepared in September of 2010 that adjusted the debtor's mortgage payment to \$1,375.87 per month, which included an escrow payment of \$118.16 and an escrow shortage payment of \$88.21. The debtor made the September 2010 payment, including those amounts, but made no payments during the remaining seven months before she filed this case. A second escrow account analysis was prepared in April of 2011 that showed a projected escrow account balance of <\$4,849.91> and a required escrow account balance of \$354.62, for a total shortage of \$5,204.53, which was adjusted by \$0.12, for a total escrow shortage of \$5,204.41 as of the petition date.

In short, it appears the debtor was significantly behind in her property tax payments in June of 2010, when the escrow account was set up, and that the Bank advanced the funds to catch those payments up. (The Bank paid the County \$3,845.20 plus a penalty of \$856.42 on June 1, 2010, and then paid what appear to be the installments for the 2010-2011 tax year in November of 2010 and March of 2011, \$709.30 each.) The court concludes that the Bank has proven the amount of its escrow shortage claim by a preponderance of the evidence, which the debtor has not

rebutted. Accordingly, the debtor's objection will be overruled.

The court will hear the matter.

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1 On May 6, 2014, after the Bank filed its response, the debtor purported to withdraw her objection. However, a moving party may not unilaterally dismiss or withdraw a motion once opposition has been filed. Fed. R. Civ. P. 41(a)(1)(A) and (2), incorporated herein by Fed. R. Bankr. P. 9014(c) and 7041.

19. [14-23135](#)-D-13 JAMES VAUGHN  
ADR-1  
REO A & D, LLC VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
4-3-14 [[10](#)]

**Final ruling:**

This case was dismissed on May 1, 2014. As a result the motion will be denied by minute order as moot. No appearance is necessary.

20. [13-35436](#)-D-13 CHARLES/LARA GLIEBE  
LRR-2

MOTION TO CONFIRM PLAN  
3-25-14 [[32](#)]

**Final ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving parties failed to serve the notice of hearing; (2) the moving parties failed to serve the creditor filing Claim No. 5 at the address on its proof of claim; and (3) the proof of service is not signed under oath with respect to the facts of service. The proof of service begins with the sentence "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct." (Emphasis added.) As the "foregoing" consists only of the caption of the document, none of the facts of service are attested to under oath. See 28 U.S.C. § 1746 [requiring that a declaration by subscribed to by the declarant; that is, signed at the bottom].

As a result of these service and notice defects, the motion will be denied, and the court need not reach the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

**Final ruling:**

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied for the following reasons: (1) the moving papers indicate this is a motion to confirm a first amended chapter 13 plan, whereas the plan filed with the motion is entitled simply Chapter 13 Plan; thus, there is nothing to distinguish it from plans filed earlier in the case; (2) the moving parties served only the motion and notice of hearing, and not the plan itself, as required by LBR 3015-1(d)(1); (3) the moving parties failed to serve the creditors filing Claim Nos. 1, 2, and 6 at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g); (4) the moving parties failed to serve the Franchise Tax Board, which has filed a proof of claim in this case, at all, as required by Fed. R. Bankr. P. 2002(b); (5) the moving parties failed to serve the party requesting special notice in this case at its designated address, as required by Fed. R. Bankr. P. 2002(g); (6) the proof of service does not contain the docket control number, as required by LBR 9014-1(e)(3); and (7) the notice of hearing purports to require significantly more of potential respondents than is required by local rule.

The notice of hearing states that opposition must include a brief but complete written statement, an answering memorandum of points and authorities, declarations, and copies of all photographs and documentary evidence on which the responding party intends to rely. It also purports to require the opposing papers to advise the adverse party that any reply to the opposition must be filed and served not later than seven calendar days prior to the hearing. Finally, the notice states that "papers not timely filed and served may be deemed by the court to consent to the granting or denial of the motion, as the case may be." None of these purported requirements are actually required by the court's rules, and their inclusion in the moving parties' notice of hearing may have deterred interested parties from filing opposition. The cautionary language (papers not timely filed may be deemed consent) differs from the language required by the local rule. The moving parties' counsel is advised to consult LBR 9014-1(d)(3), which contains the specific requirements for the notice of hearing.

Finally, the court recognizes that on April 23, 2014, after the trustee filed opposition, the moving parties purported to withdraw their motion. However, a moving party may not unilaterally dismiss or withdraw a motion once opposition has been filed. Fed. R. Civ. P. 41(a)(1)(A) and (2), incorporated herein by Fed. R. Bankr. P. 9014(c) and 7041.

For the reasons stated, the motion will be denied, and the court need not reach the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

22. [11-45142](#)-D-13 ELIZABETH LAJOS MOTION TO MODIFY PLAN  
JBR-9 3-23-14 [[129](#)]
23. [12-35945](#)-D-13 CLAUDE/KELEEN BRYANT MOTION TO APPROVE LOAN  
PLG-6 MODIFICATION  
4-4-14 [[218](#)]
24. [09-31047](#)-D-13 WALTER TORRES AND DELMY MOTION TO VALUE COLLATERAL OF  
JDP-1 GONZALEZ BANK OF AMERICA, N.A.  
4-3-14 [[62](#)]

**Final ruling:**

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Bank of America, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Bank of America, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

25. [13-20248](#)-D-13 CATHERINE LALLY MOTION TO MODIFY PLAN  
PGM-2 4-3-14 [[59](#)]

**Final ruling:**

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

26. [14-21048](#)-D-13 LARRY MENTON  
RDG-3

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
3-28-14 [[29](#)]

**Final ruling:**

This case was dismissed on May 1, 2014. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

27. [14-21455](#)-D-13 ABRAHAM/SILVIA MAGALLANEZ  
JCK-2

MOTION TO VALUE COLLATERAL OF  
CENLAR  
4-7-14 [[26](#)]

**Final ruling:**

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Cenlar at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Cenlar's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

28. [13-35356](#)-D-13 ESTHER/MAURILIO GOMEZ  
JM-2

MOTION TO VALUE COLLATERAL OF  
NATIONSTAR  
3-18-14 [[53](#)]

**Final ruling:**

This is the debtors' motion to value collateral of Nationstar. The motion will be denied because the moving parties failed to serve Nationstar in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). An earlier motion for the same relief was denied because the debtors had served Nationstar at a street address with no attention line, whereas service on a corporation, partnership, or other unincorporated association must be to the attention of an officer, managing or general agent, or agent for service of process.

This new motion was served on Nationstar, again without an attention line. As before, such service was ineffective. The new motion was also served to the attention of an agent for service of process; namely, Corporation Service Company, but at the address of Nationstar, not the address of Corporation Service Company. Where service is made to the attention of an agent for service of process, it must be to the attention of an agent actually authorized by appointment or by law to receive service of process. See Fed. R. Bankr. P. 7004(b)(3). The court takes judicial notice that the Texas Secretary of State shows the address used by the

moving parties as the address of Nationstar, not the address of Corporation Service Company.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

29. [13-31768](#)-D-13      MARIBEL/RAMON AGUILAR      MOTION TO CONFIRM PLAN  
ALB-4      3-20-14 [[78](#)]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

30. [14-21468](#)-D-13      NORMAN/PANDORA BURTON      MOTION TO VALUE COLLATERAL OF  
PGM-1      WELLS FARGO BANK, N.A.  
4-8-14 [[19](#)]

Tentative ruling:

This is the debtors' motion to value collateral, a 2003 Acura RL, at \$3,000, pursuant to § 506 of the Bankruptcy Code. Creditor Wells Fargo Bank (the "Bank") opposes the motion. For the following reasons, the motion will be granted.

The debtors have testified in support of the motion that they are familiar with the vehicle, as they drive it regularly (although not very far, because they do not trust it). They testify the vehicle is in poor condition, with approximately 182,638 miles on it, and with needed repairs to a number of items, which are specified in the debtors' declaration. The debtors have concluded it would cost between \$3,000 and \$3,500 to make the needed repairs. In their opinion, the retail value of the vehicle on the date of filing was \$3,000. Attached as an exhibit to the debtors' declaration (although not referred to in it) is a Kelley Blue Book printout showing the "fair purchase price" of a 2003 Acura RL in good condition as \$6,205.

In opposition to the motion, the Bank has submitted an NADA Official Used Car Guide printout showing several values for a 2003 Acura RL. The Bank contends the NADA "clean retail" value, \$7,150, is the best evidence of the value of the vehicle in the marketplace.

Section 506(a)(2) defines the applicable standard, "replacement value," to mean "the price a retail merchant would charge for property of that kind considering the

age and condition of the property at the time value is determined." § 506(a)(2). The debtors have submitted evidence that takes into account the age and condition of their vehicle; the Bank has had the opportunity to do so as well, but has failed to submit any evidence other than NADA values for a 2003 Acura RL in general. For this reason, the court finds the debtors' evidence, which is specific to the property to be valued, to be more in line with the applicable standard, and therefore, the more persuasive, and the motion will be granted.

The court will hear the matter.

31. [14-21174](#)-D-13      GARY LOPP AND PAMELA      MOTION TO CONFIRM PLAN  
MLA-2      CORDA-LOPP      3-27-14 [[24](#)]

**Final ruling:**

This is the debtors' motion to confirm a chapter 13 plan. The motion will be denied for the following reasons. First, as the trustee points out, the plan does not indicate the plan term. Second, as the trustee also notes, the plan proposes to pay less than the full amount of the secured claim of North Valley Bank, yet the debtors have not filed a motion to value the collateral securing that claim, as required by LBR 3015-1(j). For these reasons, the motion will be denied, and the court need not reach the other issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

32. [12-26684](#)-D-13      RUDY/ANGELITA INONG      MOTION TO INCUR DEBT  
MJH-2      3-31-14 [[28](#)]

33. [12-26684](#)-D-13      RUDY/ANGELITA INONG      MOTION TO SUSPEND PLAN PAYMENTS  
MJH-3      3-31-14 [[33](#)]

34. [11-30889](#)-D-13 MARVIN/JANICE DANIELS MOTION TO VALUE COLLATERAL OF  
MC-2 WELLS FARGO BANK, N.A.  
4-15-14 [[47](#)]

**Final ruling:**

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Wells Fargo Bank, N.A. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Wells Fargo Bank, N.A.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

35. [13-35390](#)-D-13 PAUL/KIMBERLY CAVA MOTION TO CONFIRM PLAN  
ALB-4 3-28-14 [[70](#)]

36. [14-22102](#)-D-13 SAUL/ADRIANA GARCIA OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
4-21-14 [[18](#)]

37. [14-22203](#)-D-13 PAUL/ANNE NUNEZ OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
4-23-14 [[27](#)]

38. [14-21904](#)-D-13      HERIBERTO/YOLANDA LEMUS      OBJECTION TO CONFIRMATION OF  
RDG-1      PLAN BY RUSSELL D. GREER  
4-21-14 [[22](#)]
39. [14-22208](#)-D-13      JEFFREY/SARA CHAPMAN      OBJECTION TO CONFIRMATION OF  
RDG-1      PLAN BY RUSSELL D. GREER  
4-23-14 [[23](#)]
40. [14-21817](#)-D-13      RUSSELL STEWART      OBJECTION TO CONFIRMATION OF  
RDG-2      PLAN BY TRUSTEE RUSSELL D.  
GREER  
4-21-14 [[24](#)]

**Tentative ruling:**

This is the trustee's objection to confirmation of the debtor's proposed chapter 13 plan. The debtor has filed a reply. For the following reason, the court intends to sustain the objection.

The trustee objects to confirmation on two grounds. First, the debtor testified at the meeting of creditors he receives a contribution of \$800 per month from his brother, and has for the last 10 years. Yet this income is not included on the debtor's schedules or his Form 22C. Second, the debtor testified he has a 1994 Ford truck that has not been listed on his schedules. The trustee concludes the plan has not been proposed in good faith. In response, the debtor has filed amended Schedules I and J on which he listed the \$800 contribution from his brother. He requests the plan payment be increased in the order confirming the plan. He has not amended his Form 22C, and has not addressed the issue of the Ford truck.

The court, however, has another concern. The plan lists the dividend to general unsecured creditors as 0% on claims estimated at \$302,954. By contrast, the

debtor's Schedule F lists debts totaling \$11,837. (And there are no undersecured claims listed on Schedule D that will be paid through the plan, and no non-priority portions of debts listed on Schedule E.) As parties-in-interest should be able to rely on the estimate of general unsecured claims in the plan to determine whether the proposed dividend makes sense, the court cannot find that the apparent gross overstatement of that figure in the plan has been included in good faith.

As a result, the court concludes that the debtor has failed to meet his burden of demonstrating that the plan has been proposed in good faith, and the objection will be sustained. The court will hear the matter.

41. [11-23047](#)-D-13 CELIA NARANJO CONTINUED MOTION TO SELL  
PLG-1 3-19-14 [[41](#)]

42. [14-22158](#)-D-13 JOANNE MCREYNOLDS OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
4-21-14 [[16](#)]

43. [14-23861](#)-D-13 TOAN LE MOTION FOR RELIEF FROM  
BM-1 AUTOMATIC STAY  
SAM HO VS. 4-23-14 [[16](#)]

44. [14-21468](#)-D-13 NORMAN/PANDORA BURTON CONTINUED OBJECTION TO  
RDG-1 CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
4-4-14 [[14](#)]
45. [14-22273](#)-D-13 JUGJEEV/MINERVA MANGAT MOTION TO SELL  
AVN-2 4-29-14 [[37](#)]
46. [14-21783](#)-D-13 DAVID/ELLEN SCHOEN OBJECTION TO CONFIRMATION OF  
RDG-1 PLAN BY RUSSELL D. GREER  
4-21-14 [[18](#)]
47. [14-21992](#)-D-13 CAROLYNN RODRIGUEZ OBJECTION TO CONFIRMATION OF  
RDG-2 PLAN BY RUSSELL D. GREER  
4-21-14 [[19](#)]

48. [14-21197](#)-D-13 SILVIA QUIROGA  
BHT-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY U.S.  
BANK, N.A.  
4-4-14 [[29](#)]